

Internal Revenue Service

Number: **200703031**

Release Date: 1/19/2007

Index Number: 2501.00-00, 2601.00-00,
1001.00-00, 61.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:04

PLR-149264-05

Date: September 26, 2006

Legend

Trust	=
Settlor	=
Daughter	=
A	=
B	=
C	=
D	=
E	=
F	=
G	=
H	=
Date 1	=
Year 1	=
Year 2	=
Court	=
State Law 1	=
State Law 2	=
State Law 3	=
State Law 4	=
Trust 1	=
Trust 2	=
Trust 3	=

Dear :

This is in response to your letter dated September 22, 2005, submitted by your authorized representative on your behalf, and other correspondence, concerning the

generation-skipping transfer (GST) tax, gift tax, and income tax consequences of the proposed partition of Trust and the proposed modifications of the partitioned trusts.

The facts and representations submitted are summarized as follows: Settlor executed an irrevocable trust agreement, Trust, dated Date 1, with amendments dated prior to September 25, 1985. Trust was created for the primary benefit of Settlor's daughter, Daughter, and her surviving spouse and issue, if any.

Article III of Trust provides that all of the income of Trust, in the absolute and unqualified discretion of the trustees, shall be either accumulated by the trustees for future distribution, and may then be retained in the form received, or invested and/or re-invested by the trustees in such securities or properties as they may see fit, without being limited, as to any investment, to securities or properties as may be permitted by law for the investment of trust funds; or distributed to Daughter during her lifetime. From and after the death of Daughter, if she leaves surviving issue, but no spouse, all distributions made by the trustees shall be made to Daughter's issue, per stirpes.

Article IV provides that Trust shall extend and continue until the death of the last survivor of thirteen named individuals (Settlor's children and grandchildren). There are currently five survivors remaining.

Article V provides that upon the termination of Trust all property then in the hands of the trustees shall immediately be distributed to Daughter, if living, as her sole and separate property. If Daughter shall not survive the termination of Trust, then upon the termination if Daughter has lawful issue then surviving, but no spouse, two-thirds of all property then in the hands of the trustees shall be distributed to such issue, per stirpes; but if one or more are minors their shares shall go to the proper trustees or guardians.

Article VII provides that in any case in which the trustees are required to divide the trust estate into parts or shares and to distribute the same or the proceeds thereof, they are authorized and empowered in their sole discretion to make such division in kind or in money, or partly in kind and partly in money.

Daughter died in Year 1, survived by two children, A, and C. B, the third child, died in Year 2. Daughter left no surviving spouse. A has one child, D. B is survived by two children, E and F. C has two children, G and H. The current income beneficiaries of Trust are A, C, E, and F. The current Co-trustees of Trust are D, E, and G.

The Co-trustees propose to petition Court to partition Trust into Trust 1, Trust 2, and Trust 3, one trust each to benefit one of Daughter's children, A, B, and C, and his/her family. The sole trustee of Trust 1 will be D and the current income beneficiary will be D's mother, A. The sole trustee of Trust 2 will be E and the current income beneficiaries will be E and F. The sole trustee of Trust 3 will be G and the current income beneficiary will be G's mother, C. Trust will be partitioned on a pro rata basis

into Trusts 1, 2, and 3 and, except for two modifications, Trusts 1, 2, and 3 will have the same terms as Trust. Trusts 1, 2, and 3 will terminate under the original terms of Trust as provided in Article IV of Trust.

The Co-trustees propose to obtain an order from Court to modify Trusts 1, 2, and 3 to add testamentary limited powers of appointment in two specific circumstances. First, if (a) a child of A, B, or C (Child) and all Child's issue (Issue) fail to survive termination of the trust, and if (2) there existed at no time any Issue entitled to receive income of that trust, the share of the deceased Child shall be distributed pursuant to Child's exercise of a testamentary limited power of appointment in favor of Child's surviving spouse, or in default of such appointment, as provided in Trust. Second, if (1) Child of A, B, or C and all Issue fail to survive termination of a trust, and if (2) Issue was at any time entitled to receive income of that trust, the share of Issue shall be distributed pursuant to Issue's testamentary limited power of appointment in favor of Issue's surviving spouse or parent, or in default of such appointment, as provided in Trust.

A, C, D, E, F, G and H will provide written consent to the proposed partition of Trust and proposed modifications of Trusts 1, 2, and 3 with the filing of the petition.

State Law 1 provides that a trustee or beneficiary of a trust may petition the court to modify a trust. State Law 2 provides that a trustee or beneficiary may petition the court to approve the division of a trust. State Law 3 provides that if all beneficiaries of an irrevocable trust consent, they may compel modification of a trust upon petition to the court.

State Law 4 provides that unless a settler or a testator clearly indicates that a broader power is intended by express reference to State Law 4, a person who is a beneficiary of a trust that permits the person, as trustee or cotrustee, to make discretionary distributions of income or principal to or for the benefit of himself or herself may exercise that power in his or her favor only for his or her health, education, support, or maintenance within the meaning of §§ 2041 or 2514 of the Internal Revenue Code.

Trust was irrevocable on September 25, 1985 and no additions, actual or constructive, have been made to Trust after that date.

You have requested the following rulings:

1) The proposed partition of Trust into Trusts 1, 2, and 3 will not cause Trust or Trusts 1, 2, and 3 to lose their exempt status for GST tax purposes under § 1433(a) of the Tax Reform Act of 1986 (Act) and § 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations.

2) The proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse

and Issue's surviving spouse or parent, respectively, will not cause Trusts 1, 2, and 3 to lose their exempt status for GST tax purposes under § 1433(a) of the Act and § 26.2601-1(b)(1)(i).

3) The proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not result in a transfer subject to gift tax under § 2501 by any of the beneficiaries.

4) The proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not result in the realization of any income under § 61 and does not result in the realization of any gain or loss under § 1001.

Rulings 1 and 2

Section 2601 imposes a tax on each generation-skipping transfer which includes under § 2611 a taxable distribution, a taxable termination, and a direct skip.

Under § 1433(a) of the Act, the GST tax is generally applicable to generation-skipping transfers made after October 22, 1986. However, under § 1433(b)(2)(A) and § 26.2601-1(b)(1)(i), the tax does not apply to a transfer from a trust if the trust was irrevocable on September 25, 1985, and no addition (actual or constructive) was made to the trust after that date.

Section 26.2601-1(b)(4)(i) provides rules for determining when a modification, judicial construction, settlement agreement, or trustee action with respect to a trust that is exempt from the GST tax will not cause the trust to lose its exempt status. In general, unless specifically provided otherwise, these rules are applicable only for purposes of determining whether an exempt trust retains its exempt status for GST tax purposes. Thus, (unless specifically noted) the rules do not apply in determining, for example, whether the transaction results in a gift subject to gift tax, or may cause the trust to be included in the gross estate of a beneficiary, or may result in the realization of gain for purposes of § 1001.

Section 26.2601-1(b)(4)(i)(D) provides that a modification will not cause an exempt trust to be subject to chapter 13 if the modification does not shift a beneficial interest in the trust to any beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the modification, and the modification does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. A modification of an exempt trust will result in a shift in beneficial interest to a lower generation

beneficiary if the modification can result in either an increase in the amount of a GST transfer or the creation of a new GST transfer. A modification that is administrative in nature that only indirectly increases the amount transferred will not be considered to shift a beneficial interest in the trust.

Section 26.2601-1(b)(4)(i)(E), Example 5, involves an irrevocable trust that was established in 1980. The trustee has the discretion to distribute income and principal to A, B, and their issue in such amounts as the trustee deems appropriate. On the death of the last to die of A and B, the trust principal is to be distributed to the living issue of A and B, per stirpes. In 2002, the appropriate local court approved the division of the trust into two equal trusts, one for the benefit of A and A's issue and one for the benefit of B and B's issue. The trust terms are identical except for the beneficiaries. The division of the trust into two trusts does not shift any beneficial interest in the trust to a beneficiary who occupies a lower generation (as defined in § 2651) than the person or persons who held the beneficial interest prior to the division. In addition, the division does not extend the time for vesting of any beneficial interest in the trust beyond the period provided for in the original trust. Therefore, the two partitioned trusts resulting from the division will not be subject to the provisions of chapter 13.

In the present case, Trust was irrevocable on September 25, 1985. It is represented that no additions, actual or constructive, were made to Trust after that date. The Co-trustees propose to partition Trust into Trust 1, Trust 2, and Trust 3, one trust each to benefit one of Daughter's children, A, B, and C, and his/her family. All income from each of Trusts 1, 2, and 3 will be distributed to the current income beneficiary or beneficiaries under the original terms of Trust. Trusts 1, 2, and 3 must terminate no later than the time provided for under the original terms of Trust. The Co-trustees also propose to modify Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively. In the event the testamentary limited power of appointment is not exercised, the trust shall be distributed as provided in Trust.

Based on the facts submitted and representations made, we conclude that the proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not result in a shift of any beneficial interest in Trust or Trusts 1, 2, and 3 to any beneficiary who occupies a generation lower than the persons holding the beneficial interests prior to the partition. Further, the proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 will not extend the time for vesting of any beneficial interest in Trusts 1, 2, and 3 beyond the period provided for in the original trust. Accordingly, we conclude that the proposed partition of Trust and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not cause Trust or Trusts 1, 2, and

3 to lose their exempt status for GST tax purposes under § 1433(a) and § 26.2601-1(b)(1)(i).

Ruling 3

Section 2501(a)(1) provides that a gift tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual, resident or nonresident.

Section 2511(a) provides that subject to the limitations contained in chapter 12, the gift tax imposed by § 2501 will apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.

Section 2512(a) provides that, if a gift is made in property, the value thereof at the date of the gift will be considered the amount of the gift. Section 2512(b) provides that where property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift.

Section 2514(b) provides that the exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing the power. Section 2514(c) provides that for purposes of § 2514, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (possessor), his estate, his creditors, or the creditors of his estate, except that a power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

The proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not result in any change in the beneficial interests of any of beneficiaries of the trusts. Accordingly, based on the facts submitted and representations made, we conclude that the proposed partition of Trust into Trusts 1, 2, and 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse and Issue's surviving spouse or parent, respectively, will not result in a transfer subject to gift tax under § 2501 by any of the beneficiaries.

E will be the sole trustee of Trust 2 and a beneficiary of that trust. State Law 4 provides that E, as trustee of Trust 2, may exercise the power to make discretionary distributions of income or principal to or for the benefit of E only for E's health,

education, support, and maintenance within the meaning of § 2514. Accordingly, E's exercise of the power to make distributions from Trust 2 to himself will not be deemed to be a transfer or property for purposes of §§ 2501 and 2514.

Ruling 4

Section 61(a)(3) provides that gross income includes gains derived from dealing in property. Under § 1001(a) the gain from the sale or other disposition of property is the excess of the amount realized therefrom over the adjusted basis (provided in § 1011), and the loss is the excess of the adjusted basis over the amount realized. Section 1.1001-1(a) of the Income Tax Regulations treats as income or as loss sustained the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent.

In Cottage Savings Ass'n v. Commissioner, 499 U.S. 554 (1991), the Supreme Court of the United States examined the issue of what constitutes a material difference in exchanged properties or a disposition of property for purposes of the realization requirement implicit in § 1001(a). In Cottage Savings a savings and loan association sold 90-percent participation interests in 252 mortgage loans to four other lenders. Simultaneously, the association purchased 90-percent participation interests in 305 mortgage loans held by these lenders. The exchanged properties were derived from loans made to different obligors, secured by different homes, and thus embodied legally distinct entitlements. The association claimed a deduction under § 165(a) for the adjusted difference between the face value of the participation interests the association had traded and the fair market value of the participation interests it had received.

The Supreme Court test for determining whether exchanged properties are materially different for purposes of § 1001 is whether the respective possessors enjoy legal entitlements that are different in kind or extent. Cottage Savings, at 565. Because the mortgages had different mortgagors and were secured by different properties, the loans were materially different. The Court therefore held that the taxpayer actually sustained a loss for purposes of § 165(a).

In Rev. Rul. 69-486, 1969-2 C.B. 159, a trust instrument required the trustee to distribute the corpus of a trust, consisting of promissory notes and common stock, one-half to an individual and one-half to a tax exempt charitable organization. The beneficiaries, however, agreed that the individual should receive all of the notes and the charitable organization should receive all of the stock. Although the trustee complied with their request, neither the trust instrument nor local law allowed the trustee to make an allocation of specific property in kind. Thus, the beneficiaries were considered to have received a pro rata distribution of the notes and stock, followed by a deemed exchange between the beneficiaries of their respective shares of stock and notes. Rev. Rul. 69-486, therefore, concluded that the individual recognized gain on the disposition of his shares of the common stock in an amount determined under § 1001.

A pro rata partition of jointly owned property is not a sale or other disposition of property if the co-owners of the joint property sever their joint interests but do not acquire a new or additional interest as a result thereof. Thus, neither gain nor loss is realized on a partition. Rev. Rul. 56-437, 1956-2 C.B. 507.

Under the proposed Court order, the beneficiaries will not acquire their interests in each of Trusts 1, 2, and 3, as a result of an exchange of their property interests in Trust. Rather, the trustees are exercising their right to partition Trust as allowed by State Law 2 and by reason of their existing authority to distribute Trust income or principal. Rev. Rul. 56-437. While Trusts 1, 2, and 3 will be modified pursuant to Court order to allow Child and Issue a testamentary limited power of appointment, such modifications will not be a material change under § 1001.

In contrast to the situation in Rev. Rul. 69-486, the partition of Trust into Trusts 1, 2, and 3 will be pro rata and each of Trusts 1, 2, and 3 will receive an equal share of each asset of Trust. The interest that each of the beneficiaries will have in Trusts 1, 2, and 3 is substantially the same as each currently has in Trust. Finally, Trusts 1, 2, and 3 will be subject to the original terms of Trust.

Accordingly, based on the facts submitted and representations made, we conclude that the proposed partition of Trust into Trust 1, Trust 2, and Trust 3 and the proposed modifications of Trusts 1, 2, and 3 to provide Child and Issue with a testamentary limited power of appointment to benefit Child's surviving spouse or Issue's surviving spouse or parent, respectively, pursuant to Court order, will not be considered to be a sale or other disposition of Trust property and, thus, will not cause any beneficiary, Trust, or Trusts 1, 2, or 3 to recognize any gain or loss from a sale or other disposition of the property under §§ 61 or 1001.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives

Sincerely,

Lorraine E. Gardner
Senior Counsel, Branch 4
(Passthroughs & Special Industries)

Enclosures

Copy for section 6110 purposes

Copy of this letter